

**BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS ON BEHALF OF
THE SECRETARY OF STATE**

STATE OF COLORADO

CASE NO. OS 2004-0029

AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY ANDRE VIGIL REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY DENNIS
HISEY**

This matter is before the Division of Administrative Hearings (Division) on the complaint of Andre Vigil (Complainant) against Dennis Hisey (Hisey or Respondent). The complaint was filed with the Colorado Secretary of State on October 15, 2004. On October 18, 2004 the Secretary of State referred the complaint to the Division as required by Colo. Const. art. XXVIII, sec. 9(2)(a). The complaint alleges that Hisey violated certain provisions of the Fair Campaign Practices Act (FCPA)¹ by failing to: report the name of the contributor's occupation and employer in instances when the contributor donated \$100 or more; report the status a \$6500 and a \$1000 campaign loan; report the correct aggregate campaign contributions of Sharon Adams; report the correct address of contributor Tech Contractors; accurately report reimbursements to Jennifer Choate, Deb Culig and Kathy Hisey; report non-monetary contributions received from Robert Garner and the value of the costs associated with setting up and maintaining a campaign website; and file a report with the Secretary of State for a \$1000 contribution received thirty days before the general election.

The hearing on the complaint was conducted in Denver, Colorado, on November 2, 2004 before Administrative Law Judge (ALJ) Michelle A. Norcross. The hearing was digitally recorded in Courtroom C. Both parties appeared without counsel. Complainant's exhibits 1 through 8 were admitted into evidence without objection. Respondent's exhibits A through H were admitted into the record without objection.

Pre-hearing Motions

1. Motion to Amend the Complaint. On October 25, 2004 Complainant filed a request with the Division to add the following charges to the complaint: failure to report a \$1000 contribution with the Secretary of State,

¹ Section 1-45-101, *et seq.* C.R.S. (2004)

failure to report the correct mailing address of Tech Contractors, and failure to accurately report reimbursements to Kathy Hisey. On November 1, 2004 Complainant filed a second request with the Division to add the following charges to the complaint: failure to file a candidate affidavit or a committee registration form with the appropriate officer.

Respondent did not object to Complainant's motions to amend. The ALJ grants Complainant's first motion to amend the complaint but denies Complainant's second motion to include the charges of failure to file a candidate affidavit or committee registration on the basis that the ALJ lacks jurisdiction over violations arising under Section 1-45-110, C.R.S.

2. Motion to Dismiss. At hearing, Respondent made a motion to dismiss the alleged violations that occurred more than 180 days prior to the filing of the complaint. Under the Colorado Constitution, art. XXVIII, sec. (2)(a), any person who believes that a violation of section 3, section 4, section 5, section 6, section 7, or section 9(1)(e) of Article XXVIII or of sections 1-45-108, 114, 115, or 117, C.R.S. has occurred may file a written complaint with the Secretary of State no later than one hundred eighty days after the date of the alleged violation. Complainant's allegations relating to the October 29, 2003 Report of Contributions and Expenditures, which includes the \$6500 loan, are outside the 180 day time limit and are dismissed.

The Administrative Law Judge issues this Agency Decision pursuant to Colo. Const. art. XXVIII, sec. 9(1)(f), (2)(a) and Section 24-4-105(14)(a), C.R.S.

FINDINGS OF FACT

1. Complainant Andre Vigil and Respondent Dennis Hisey were candidates for the position of El Paso County Commissioner District 4 in the last general election held on November 2, 2004. Hisey announced his candidacy in October 2003.

2. As a candidate for political office, Hisey's Committee (Committee) is required to file reports with the El Paso County Clerk and Recorder disclosing the amount of contributions received and expenditures incurred during each reporting period.

July 20, 2004 Report

3. The Committee filed a Report of Contributions and Expenditures on July 20, 2004. The Committee reported, among other things, receipt of a \$1000 loan and receipt of numerous contributions and expenditures. Fifteen contributors donated \$100 or more to the campaign during the July 20 reporting period; the list of contributors is attached to the report as Schedule A.

Contributions

4. Schedule A identifies the name and address of the contributor, the date of the contribution, the contribution amount and the aggregate contribution for the reporting cycle. The July 20 Schedule A does not list the occupation or employer of the contributors who donated \$100 or more.

5. Sharon Adams, among others, contributed money to the Committee. During the July 20 reporting period, Ms. Adams contributed \$240 to the campaign. Although both \$120 donations are reported in the July 20 report, the Committee incorrectly reported an aggregate contribution sum of \$120. It is undisputed that the correct aggregate sum for contributor Adams is \$240.

6. In the July 20 report, the Committee reported the mailing address for contributor Tech Contractors as 3375 Kenyon Street, San Diego, CA 92110. The correct address for Tech Contractors is 3575 Kenyon Street, San Diego, CA 92110.

7. On October 25, 2004 the Committee filed an amended July 20, 2004 Report of Contributions and Expenditures and disclosed the occupation and employer of all individuals who contributed \$100 or more. The Committee also corrected the aggregate amount for contributor Sharon Adams and changed the address of contributor Tech Contractors to reflect the correct mailing address of 3575 Kenyon Street, San Diego, CA 92110.

Expenditures

8. Schedule B of the July 20 report lists the Committee's expenditures. On June 10, 2004 the Committee reimbursed Jennifer Choate \$50.10 for social supplies. During the same reporting cycle, it is reported that Ms. Choate contributed \$50.10 to the Committee.

9. Respondent credibly testified and it is found as fact that Ms. Choate purchased \$50.10 in supplies for the campaign and initially did not want to be reimbursed. Accordingly, the Committee disclosed the amount as a contribution to the campaign. Later, after Respondent convinced Ms. Choate that she should be reimbursed for campaign expenses, Ms. Choate agreed and was reimbursed for the cost of the supplies. The Committee reported the reimbursement in the July 20 report.

10. A local news article published in September 2004 carried a story about three candidates, including the Respondent, who allegedly failed to pay Deb Culig, a Lakewood-based designer, for campaign brochures. Ms. Culig claims that Hisey owes her \$536.25 for these brochures. In the article, Hisey is quoted as saying, "if this campaign owes anybody any money, we will pay it."

Based on the quote in the news article, Complainant contends that Hisey paid Ms. Culig but failed to disclose the expenditure. The ALJ disagrees.

11. Respondent credibly testified and it is found as fact that he used the consulting services of Sara B. Jack & Associates for his campaign, not the services of Ms. Culig. Respondent disputes Ms. Culig's allegations and the matter is currently in litigation. There is no credible evidence in the record before the ALJ that Hisey received materials from Ms. Culig or paid her for campaign brochures.

Non-monetary Contributions

12. In connection with the lawsuit filed by Ms. Culig, attorney Robert Garner has agreed to represent Hisey free of charge. The Committee has never reported receipt of any non-monetary contributions from Robert Garner for free legal services.

13. Respondent credibly testified and it is found as fact that Mr. Garner's services have not yet been provided; therefore, they have not been accounted for in campaign reports. However, once Mr. Garner's services have been rendered and the value has been determined, the Committee will report the amount as a non-monetary contribution.

August 6, 2004 Report

14. The Committee filed a Report of Contributions and Expenditures on August 6, 2004. The Committee reported receiving a total of \$900 in contributions; however it failed to file Schedule A, which lists the individual contributors and the contributions received, with the report.

15. Schedule C (Loans) attached to the August 6 report shows repayment of a \$1000 campaign loan that was first disclosed in the July 20 report. This loan was continuously reported until repaid and was repaid in full by the time the August 6 report was filed.

16. On October 25, 2004 the Committee filed an amended August 6, 2004 report with Schedule A that lists the individual contributors and contribution amounts.

September 9, 2004 Report

17. On September 9, 2004 in its Report of Contributions and Expenditures the Committee disclosed receipt of two contributions of \$100 or more. The Committee did not report the occupation or employer of the two \$100-or-more contributors.

18. On October 25, 2004 the Committee filed an amended September 9, 2004 report with an amended Schedule A that lists the occupation and employer of the two \$100-or-more contributors.

October 12, 2004 Report

19. On October 12, 2004 the Committee filed its Report of Contributions and Expenditures disclosing receipt of a \$1000 contribution from Cygent Land, LLC on October 5, 2004. The Committee did not report the \$1000 Cygent Land contribution to the Secretary of State.

20. In the October 12 report, the Committee reported contributor Tech Contractors mailing address as P.O. Box 80036, San Diego, CA 92138. It is undisputed that Tech Contractors uses this post office box as its mailing address.

21. Kathy Hisey is Respondent wife. She helped her husband with his candidacy and was reimbursed by the Committee for several campaign expenditures. On March 26, 2004 Ms. Hisey was reimbursed \$177.98 for postage and coffee supplies. On April 29, 2004 she received \$150 for assembly expenses; on May 25, 2004 she received \$222.76 for cake, supplies and sign posts; on September 7, 2004 she received \$191.49 for parade and miscellaneous campaign expenses; and on September 21, 2004 she was reimbursed \$100.² It is un-refuted that Ms. Hisey worked on her husband's campaign and purchased materials and supplies for the campaign that equal the amount of the above reimbursements.

Campaign Website

22. The Committee operates a website with the URL of <http://www.electhisey.com>. In order to set up and maintain a website, it is undisputed by the parties that there are costs and fees involved in setting up and maintaining the website. Further, the website is a value to the Committee. None of the Committee reports disclose the value of the costs incurred in setting up and maintaining the website.

23. There was no evidence regarding when the website was set up, how long it was used by the Committee, or the value of the costs associated with setting up and maintaining the website.

Conditional Acceptance of Reports and Right to Cure Report Deficiencies

24. On October 15, 2004 Respondent received written notice from the El Paso County Clerk and Recorder that his reports were incomplete because he

² On December 8, 2003 the Committee reimbursed Ms. Hisey \$175.24. However, this expenditure is more than 180 days old and is therefore time barred by the FCPA.

failed to list the occupation and employer of the persons who contributed \$100 or more to his campaign.

25. The El Paso County Clerk and Recorder accepted Hisey's reports on a conditional basis and gave Hisey seven business days from the date of the October 15, 2004 letter to file amended reports curing the deficiencies. Hisey filed all his amended reports on October 25, 2004.

DISCUSSION

Disclosure Required for Contributions of \$100 or More

The Complainant asserts that Respondent violated Sections 1-45-108(1)(a)(I) and (II) of the FCPA, which provides as follows:

All . . . candidate committees shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made; and obligations entered into by the committee or party.

In the case of contributions made to a candidate committee . . . the disclosure required by this section shall also include the occupation and employer of each person who has made a contribution of one hundred dollars or more to such committee. . .

In the July 20 and September 9, 2004 reports, Hisey failed to disclose the occupation and employer of the persons who contributed \$100 or more to his campaign. On October 25, 2004 Hisey filed amended July 20 and September 9 reports and included the occupation and employer of each \$100 or more contributor.

The August 6, 2004 report disclosed receipt of \$900 in contributions; however, Schedule A that itemizes individual contributions was not filed with the original report. On October 25, 2004 Hisey filed an amended report and included the itemized list of individual campaign contributions including the occupation and employer of each \$100 or more contributor.

Disclosure Required for Receipt of \$1000 Contributions

In accordance with Section 1-45-108(2.5), C.R.S., all candidate committees . . . shall file a report with the Secretary of State of any contribution of one thousand dollars or more at any time within thirty days proceeding the date

of the primary or general election. This report shall be filed with the Secretary of State no later than twenty-four hours after receipt of said contribution.

On October 5, 2004 Hisey received a \$1000 contribution from Cygnet Land, LLC. The general election was held on November 2, 2004, less than thirty days from receipt of the \$1000 contribution. It is undisputed that the Committee did not file a report with the Secretary of State's office as required by 1-45-108(2.5), C.R.S.

Disclosure for Expenditures

All candidate committees are required, by Section 1-45-108(1)(a)(I), C.R.S., to report to the appropriate officer their expenditures made.

Jennifer Choate

In the instance case, Complainant alleges that the \$50.10 reimbursement to Jennifer Choate was improper and violated the FCPA because the transaction was recorded as a contribution and as a reimbursement in the same report. The ALJ disagrees.

Ms. Choate purchased campaign supplies in the amount of \$50.10. Initially, she did not want to be reimbursed. Therefore, the Committee recorded the donation as a contribution. Later, Ms. Choate changed her mind and was reimbursed the \$50.10 expense. Because the two transactions occurred during the same reporting period, the Committee disclosed both items on the same report. The ALJ finds no provision of the FCPA that prohibits the Committee's actions in this regard. The Committee complied with the FCPA reporting requirements with respect to the \$50.10 reimbursement to Ms. Choate.

Deb Culig

The Complainant alleges that Respondent paid \$536.25 to Deb Culig, a Lakewood-based designer, for campaign brochures but failed to disclose this expenditure in his reports. The ALJ disagrees.

Ms. Culig's has made allegations against Respondent that he owes her \$536.25; however, Respondent denies owing Ms. Culig any money. The matter is currently in litigation. There is no credible evidence in the record before the ALJ that Hisey received materials from Ms. Culig or paid her for campaign brochures.

Kathy Hisey

The Complainant alleges that Respondent made improper or questionable reimbursements to his wife using campaign funds. The ALJ concludes that

Complainant's allegations are unsupported by the record. First, there is no provision in the FCPA that prohibits reimbursements to family members. Second, and more importantly, it is un-refuted that Ms. Hisey worked on her husband's campaign and purchased materials and supplies for the campaign that equal the amount of the reimbursements she received from the Committee.

Non-Monetary Contributions

Legal Fees

The Complainant contends that Hisey violated the FCPA by failing to disclose receipt of non-monetary contributions in the form of free legal services from attorney Robert Garner. The ALJ disagrees. The credible evidence in the record establishes that Mr. Garner has offered to defend Hisey in the lawsuit filed by Ms. Culig. However, as of the date of hearing in this matter, Mr. Garner had not yet performed any services for Hisey. Hisey credibly testified that when Mr. Garner's services have been provided and the value of his services has been established, the Committee will disclose the contribution.

Website

The Complainant alleges that Respondent violated the FCPA by failing to disclose the costs and fees incurred in setting up and maintaining a website. The ALJ agrees. The acceptance by the Committee of the value of the cost of setting up and maintaining its website is a reportable contribution and expenditure under the FCPA. However, there was no evidence when the website was set up, how long the Committee was using it, or the value of the costs associated with establishing and maintaining the website.

Loans

All loans received by a committee or party must be reported continuously until repaid. 8 CCR 1505-6, sec. 4.5; Colo. Const., art. XXVIII, sec. 3(8). The Complainant asserts that Hisey failed to continuously report all his campaign loans until through the repayment period. The ALJ disagrees. The \$1000 loan that was first reported in the July 20, 2004 report was continuously reported until repaid; the repayment is documented in the August 6, 2004 report.

Miscellaneous Violations

Sharon Adams

The Complainant argues that Respondent violated the FCPA when he filed the July 20 report and failed to disclose the correct aggregate contribution amount for contributor Sharon Adams. The ALJ disagrees. It is undisputed that the aggregate amount reported in the July 20 report is \$120 and it should have

been \$240. However, both Ms. Adams' contributions during the reporting period were separately reported and Respondent filed an amended July 20 report correcting the oversight when he learned of the inaccuracy.

Tech Contractors

Complainant alleges that Respondent violated the FCPA by failing to accurately report the correct mailing address for contributor Tech Contractors in the July 20 report. The ALJ disagrees. Respondent mistakenly reported the street address as 3375 Kenyon Street; the correct address is 3575 Kenyon Street. When the mistake was brought to his attention, he filed an amended report and corrected this mistake.

Complainant further claims that Respondent violated the reporting requirements of the FCPA when he used a post office box as the mailing address for contributor Tech Contractors in his October 12 report. The ALJ disagrees. The FCPA requires the candidate committee to disclose the name and the address of each contributor; however, nothing in the FCPA prohibits listing a post office box as a contributor's mailing address. Respondent's use of a post office box as Tech Contractor's mailing address in the October 12 report is not a violation of the FCPA.

CONCLUSIONS OF LAW

1. Pursuant to Colo. Const, art. XXVIII, sec. 9(2)(a), the Administrative Law Judge has jurisdiction to conduct a hearing in this matter and to impose appropriate sanctions.

2. This issues in a hearing conducted by an Administrative Law Judge under Article XXVIII of the Colorado Constitution are limited to whether any person has violated Sections 3 through 7 or 9(1)(e) of Article XXVIII, or Sections 1-45-108, 114, 115, or 117, C.R.S. Colo. Const. art. XXVIII, sec. 9(2)(a). If an Administrative Law Judge determines that a violation of one of these provisions has occurred, the Administrative Law Judge's decision must include the appropriate order, sanction or relief authorized by Article XXVIII. Colo. Const. art. XXVIII, sec. 9(2)(a).

3. The allegations in the complaint relating to the October 29, 2003 report, including but not limited to the \$6500 campaign loan, are dismissed on the basis that the events occurred more than 180 days prior to the date Complainant filed his complaint with the Secretary of State. Colo. Const. art. XXVIII, sec. (2)(a)

4. The allegations in the complaint relating to the filing of a candidate affidavit or committee registration are dismissed on the basis that the ALJ has no

jurisdiction over claims arising under Section 1-45-110, C.R.S. Colo. Const. art. XXVIII, sec. 9(2)(a).

5. Colo. Const. art. XXVIII, sec. 9(1)(f) provides that the hearing is conducted in accordance with the Colorado Administrative Procedure Act (APA)³. Under the APA, the proponent of an order has the burden of proof. Section 24-4-105(7), C.R.S. In this instance, Complainant is the proponent of an order seeking civil penalties against Respondent for violations of the FCPA. Accordingly, Complainant has the burden of proof.

6. The July 20 and September 9, 2004 Report of Contributions and Expenditures filed by the Committee did not list the occupation and employer of the persons who contributed \$100 or more and was not in compliance with Section 1-45-108(1)(a)(II), C.R.S. In all other respects the July 20 and September 9 reports complied with the FCPA.

7. The August 6 Report of Contributions and Expenditures filed by the Committee did not include the itemized list of individual contributors and was not in compliance with Section 1-45-108(1)(a)(I), C.R.S. In all other respects the August 6 report complied with the FCPA.

8. The October 12, 2004 Report of Contributors and Expenditures filed by the Committee disclosed receipt of a \$1000 contribution within thirty days of the general election. However, the Committee did not file a report with the Secretary of State's office within twenty-four hours after receipt and violated Section 1-45-108(2.5), C.R.S. In all other respects the October 12 report complied with the FCPA.

9. The amended Reports of Contributors and Expenditures filed by the Committee on October 25, 2004 complied with the reporting requirements of the FCPA.

10. The acceptance by the Committee of the value of the cost of setting up and maintaining its website was a reportable contribution and expenditure under Section 1-45-108(1)(a)(I), C.R.S. The Committee's failure to report the value of the cost of setting up and maintaining its website was not in compliance with the FCPA.

AGENCY DECISION

It is the Agency Decision of the Administrative Law Judge that Respondent failed to comply with the reporting requirements of the FCPA with regard to the reporting requirements for \$100 contributions in the July 20, August 6 and September 9, 2004 reports. Respondent also failed to comply with the reporting requirements of the FCPA with regard to the \$1000 contribution

³ Section 24-4-101, *et seq.*, C.R.S.

received on October 5, 2004 from Cygent Land, LLC. It is the further decision of the Administrative Law Judge that Respondent failed to comply with the reporting requirements of the FCPA with regard to disclosing the value of the cost of setting up and maintaining a campaign website. In all other respects, Respondent's filings with the El Paso County Clerk and Recorder complied with the FCPA.

Once a violation of the FCPA has been established, the Administrative Law Judge must include in the Agency Decision the appropriate order, sanction or relief authorized by the FCPA. Colo. Const. art. XXVIII, sec. 9(2)(a). Accordingly, an order issued by the Administrative Law Judge in this case must relate to a violation of one of the identified constitutional or statutory provisions, and any sanction must be authorized by Article XXVIII of the Colorado Constitution.

Respondent's failure to report the occupation and employer of the persons who contributed \$100 or more to the Committee violated the FCPA. On October 15, 2004 the El Paso County Clerk and Recorder first informed Respondent that he was required to provide such information and file amended reports on or before October 26, 2004. Respondent filed amended reports on October 25, 2004 and included the occupation and employer of all contributors donating \$100 or more. No sanction is warranted by this event because Respondent acted in good faith and corrected the violation promptly after the deficiencies in his reports were called to his attention.

Respondent's failure to file a report with the Secretary of State within twenty-four hours after receipt of the \$1000 contribution from Cygent Land, LLC violated the FCPA. As of the date of the hearing in this case, Respondent had still not filed a report with the Secretary of State concerning this contribution. For this violation, the Administrative Law Judge imposes a penalty of \$500 against the Respondent.

Respondent's failure to report the value of the costs of setting up and maintaining a campaign website violated the FCPA. However, there was no evidence regarding when the website was set up, when the Committee starting using the website and the value of the costs associated with establishing and maintaining the website. Accordingly, no sanction is warranted by this failure.

This decision is subject to review by the Colorado Court of Appeals, pursuant to Section 24-4-106(11), C.R.S. Colo. Const., art. XXVIII, sec. 9(2)(a).

DONE AND SIGNED

November 16, 2004

Michelle A. Norcross
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above **AGENCY DECISION** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Andre Vigil
6590 Weeping Willow Drive
Colorado Springs, CO 80925

and

Dennis Hisey
6725 Athletic Avenue
Colorado Springs, CO 80911

on this ____ day of November 2004.
